

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RONALD P. PASSATEMPO, TRUSTEE,)
On behalf of the Samuel Pietropaolo Irrevacable)
Trust, SAMUEL PIETROPAOLO, GRANTOR)
to the Samuel Pietropaolo Irrevocable Trust,)
and PATRICIA D. PIETROPAOLO,)
BENEFICIARY of the Samuel Pietropaolo)
Irrevocable Trust,)

Plaintiffs,

V.

Civil Action No. 05-10118-GAO

FREDERICK V. MCMENIMEN III, BARRY)
G. ARMSTRONG, NEW ENGLAND)
ADVISORY GROUP, LLC, 1717 CAPITAL)
MANAGEMENT COMPANY, NATIONWIDE)
PROVIDENT (f/k/a Provident Mutual Life)
Insurance Company), and NATIONWIDE)
FINANCIAL SERVICES, INC.,)

Defendants.

**ANSWER OF DEFENDANT NATIONWIDE LIFE INSURANCE
COMPANY OF AMERICA¹**

Defendant Nationwide Life Insurance Company of America (hereinafter “Nationwide”) answers the First Amended Complaint and Jury Demand of Plaintiffs Ronald P. Passatempo, Samuel Pietropaolo, and Patricia Pietropaolo (hereinafter “Plaintiffs”) as follows:

¹ Nationwide Life Insurance Company of America is misnamed in the Plaintiffs' Complaint as "Nationwide Provident (f/k/a Provident Mutual Life Company)." "Nationwide Provident" is the service mark of Nationwide Life Insurance Company of America. Nationwide Life Insurance Company of America is the proper name of the company.

Parties

1. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 1 of Plaintiffs' Complaint.
2. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 2 of Plaintiffs' Complaint.
3. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 3 of Plaintiffs' Complaint.
4. The allegations contained in Paragraph 4 of Plaintiffs' Complaint are ambiguous and conclusory. To the extent an answer is required, Nationwide denies the allegations contained in Paragraph 4.
5. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 5 of Plaintiffs' Complaint.
6. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 6 of Plaintiffs' Complaint.
7. Nationwide admits the allegations contained in Paragraph 7 of Plaintiffs' Complaint.
8. Nationwide Life Insurance Company of America is the proper name of Nationwide Provident. (*See supra* note 1.) Nationwide is a wholly-owned subsidiary of Nationwide Financial Services, Inc. (hereinafter "NFS"). NFS has an address of 1 Nationwide Plaza, Columbus, Ohio 43215. Nationwide denies the remaining allegations contained in the first sentence of Paragraph 8 of Plaintiffs' Complaint. The allegations contained in the second sentence of Paragraph 8 are ambiguous and conclusory; to the

extent an answer is required, Nationwide denies the second sentence of Paragraph 8.
Nationwide denies the last sentence of Paragraph 8.

9. Nationwide admits the allegations contained in Paragraph 9 of Plaintiffs' Complaint.

Facts

10. Nationwide restates its answers to the above-numbered Paragraphs.

11. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 11 of Plaintiffs' Complaint.

12. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 12 of Plaintiffs' Complaint.

13. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 13 of Plaintiffs' Complaint.

14. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 14 of Plaintiffs' Complaint.

15. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 15 of Plaintiffs' Complaint.

16. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 16 of Plaintiffs' Complaint.

17. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 17 of Plaintiffs' Complaint.

18. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 18 of Plaintiffs' Complaint.

19. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 19 of Plaintiffs' Complaint.

20. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 20 of Plaintiffs' Complaint.

21. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 21 of Plaintiffs' Complaint.

22. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 22 of Plaintiffs' Complaint.

23. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 23 of Plaintiffs' Complaint.

24. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 24 of Plaintiffs' Complaint.

25. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 25 of Plaintiffs' Complaint.

26. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 26 of Plaintiffs' Complaint.

27. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 27 of Plaintiffs' Complaint.

28. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 28 of Plaintiffs' Complaint.

29. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 29 of Plaintiffs' Complaint.

30. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 30 of Plaintiffs' Complaint.

31. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 31 of Plaintiffs' Complaint.

32. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 32 of Plaintiffs' Complaint.

33. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 33 of Plaintiffs' Complaint.

34. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 34 of Plaintiffs' Complaint.

35. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 35 of Plaintiffs' Complaint.

36. Nationwide admits the first sentence of Paragraph 36 of Plaintiffs' Complaint. Nationwide is without knowledge or information sufficient to form a belief as to the truth of the remainder of Paragraph 36.

37. Nationwide admits the first sentence of Paragraph 37 of Plaintiffs' Complaint. Nationwide is without knowledge or information sufficient to form a belief as to the truth of the remainder of Paragraph 37.

38. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 38 of Plaintiffs' Complaint.

39. Nationwide admits that it subsequently approved an application for life insurance on the life of Plaintiff Samuel Pietropaolo.

40. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 40 of Plaintiffs' Complaint.

41. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 41 of Plaintiffs' Complaint.

42. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 42 of Plaintiffs' Complaint.

43. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 43 of Plaintiffs' Complaint.

44. Nationwide admits the first sentence of Paragraph 44 of Plaintiffs' Complaint. Nationwide is without knowledge or information sufficient to form a belief as to the truth of the remainder of Paragraph 44.

45. Nationwide is without knowledge or information sufficient to form a belief as to Plaintiffs' assertion that Defendant Frederick V. McMenimen III (hereinafter "Defendant McMenimen") sold the policy at issue here to Plaintiffs "in coordination with Mr. Armstrong and NEAG." Nationwide denies the first sentence of Paragraph 45 of Plaintiffs' Complaint insofar as it asserts that Defendant McMenimen sold the Policy to Plaintiffs "through" NFS. Nationwide admits the second and third sentences of Paragraph 45. Nationwide denies the last sentence of Paragraph 45.

46. Nationwide denies the first sentence of Paragraph 46 of Plaintiffs' Complaint. Nationwide is without knowledge or information sufficient to form a belief as to the truth of the second sentence of Paragraph 46. Nationwide admits that it has received approximately \$100,000 in premium payments on the policy at issue here.

47. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 47 of Plaintiffs' Complaint.

48. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 48 of Plaintiffs' Complaint.

49. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 49 of Plaintiffs' Complaint.

50. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 50 of Plaintiffs' Complaint.

51. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 51 of Plaintiffs' Complaint.

52. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 52 of Plaintiffs' Complaint.

53. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 53 of Plaintiffs' Complaint.

54. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 54 of Plaintiffs' Complaint.

55. Nationwide denies the allegations contained in Paragraph 55 of Plaintiffs' Complaint.

56. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 56 of Plaintiffs' Complaint.

57. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 57 of Plaintiffs' Complaint.

58. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 58 of Plaintiffs' Complaint.

59. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 59 of Plaintiffs' Complaint.

60. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 60 of Plaintiffs' Complaint.

61. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 61 of Plaintiffs' Complaint.

62. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 62 of Plaintiffs' Complaint.

63. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 63 of Plaintiffs' Complaint.

64. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 64 of Plaintiffs' Complaint.

65. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 65 of Plaintiffs' Complaint.

66. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 66 of Plaintiffs' Complaint.

67. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 67 of Plaintiffs' Complaint.

68. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 68 of Plaintiffs' Complaint.

69. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 69 of Plaintiffs' Complaint.

70. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 70 of Plaintiffs' Complaint.

71. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 71 of Plaintiffs' Complaint.

72. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 72 of Plaintiffs' Complaint.

73. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 73 of Plaintiffs' Complaint.

74. Nationwide admits that Defendant McMenimen received commissions in connection with the policy at issue here while under contract with Nationwide. Nationwide denies the remainder of the allegations contained in Paragraph 74 of Plaintiffs' Complaint.

75. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 75 of Plaintiffs' Complaint.

76. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 76 of Plaintiffs' Complaint.

77. Nationwide denies that it was ever requested to attend a meeting among Defendant McMenimen, Plaintiff Samuel Pietropaolo's son Samuel Pietropaolo, and representatives of Nationwide. Nationwide admits the remainder of Paragraph 77 of Plaintiffs' Complaint.

78. Nationwide admits that it received a copy of the letter identified in Paragraph 78 and Exhibit I of Plaintiffs' Complaint.

79. Nationwide denies the allegations contained in Paragraph 79 of Plaintiffs' Complaint.

Count I

80. Nationwide restates its answers to the above-numbered Paragraphs.

81. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 81 of Plaintiffs' Complaint.

82. Nationwide denies the allegations contained in Paragraph 82 of Plaintiffs' Complaint.

83. Nationwide denies the allegations contained in Paragraph 83 of Plaintiffs' Complaint.

84. Nationwide denies the allegations contained in Paragraph 84 of Plaintiffs' Complaint.

85. Nationwide denies the allegations contained in Paragraph 85 of Plaintiffs' Complaint.

86. Nationwide denies the allegations contained in Paragraph 86 of Plaintiffs' Complaint.

Count II

87. Nationwide restates its answers to the above-numbered Paragraphs.

88. Nationwide denies the allegations contained in Paragraph 88 of Plaintiffs' Complaint.

89. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 89 of Plaintiffs' Complaint.

90. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 90 of Plaintiffs' Complaint.

91. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 91 of Plaintiffs' Complaint.

92. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 92 of Plaintiffs' Complaint.

93. Nationwide denies the allegations contained in Paragraph 93 of Plaintiffs' Complaint.

94. Nationwide denies the allegations contained in Paragraph 94 of Plaintiffs' Complaint.

95. Nationwide denies the allegations contained in Paragraph 95 of Plaintiffs' Complaint.

96. Nationwide denies the allegations contained in Paragraph 96 of Plaintiffs' Complaint.

Count III

97. Nationwide restates its answers to the above-numbered Paragraphs.

98. Nationwide denies the allegations contained in Paragraph 98 of Plaintiffs' Complaint.

99. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 99 of Plaintiffs' Complaint.

100. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 100 of Plaintiffs' Complaint.

101. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 101 of Plaintiffs' Complaint.

102. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 102 of Plaintiffs' Complaint.

103. Nationwide denies the allegations contained in Paragraph 103 of Plaintiffs' Complaint.

104. Nationwide denies the allegations contained in Paragraph 104 of Plaintiffs' Complaint.

Count IV

105. Nationwide restates its answers to the above-numbered Paragraphs.

106. Nationwide denies the allegations contained in Paragraph 106 of Plaintiffs' Complaint.

107. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 107 of Plaintiffs' Complaint.

108. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 108 of Plaintiffs' Complaint.

109. Nationwide is without knowledge or information sufficient to form a belief as to the truth of Paragraph 109 of Plaintiffs' Complaint.

110. Nationwide denies the allegations contained in Paragraph 110 of Plaintiffs' Complaint.

111. Nationwide denies the allegations contained in Paragraph 111 of Plaintiffs' Complaint.

112. Nationwide denies the allegations contained in Paragraph 112 of Plaintiffs' Complaint.

113. Nationwide denies the allegations contained in Paragraph 113 of Plaintiffs' Complaint.

Count V

114. Nationwide restates its answers to the above-numbered Paragraphs.

115. Nationwide denies the allegations contained in Paragraph 115 of Plaintiffs' Complaint.

116. Nationwide denies the allegations contained in Paragraph 116 of Plaintiffs' Complaint.

117. Nationwide denies the allegations contained in Paragraph 117 of Plaintiffs' Complaint.

118. Nationwide denies the allegations contained in Paragraph 118 of Plaintiffs' Complaint.

Count VI

119. Nationwide restates its answers to the above-numbered Paragraphs.

120. Nationwide denies the allegations contained in Paragraph 120 of Plaintiffs' Complaint.

121. Nationwide denies the allegations contained in Paragraph 121 of Plaintiffs' Complaint.

122. Nationwide denies the allegations contained in Paragraph 122 of Plaintiffs' Complaint.

123. Nationwide denies the allegations contained in Paragraph 123 of Plaintiffs' Complaint.

Count VII

124. Nationwide restates its answers to the above-numbered Paragraphs.

125. Nationwide denies the allegations contained in Paragraph 125 of Plaintiffs' Complaint.

126. Nationwide denies the allegations contained in Paragraph 126 of Plaintiffs' Complaint.

127. Nationwide denies the allegations contained in Paragraph 127 of Plaintiffs' Complaint.

128. Nationwide denies the allegations contained in Paragraph 128 of Plaintiffs' Complaint.

Count VIII

129. Nationwide restates its answers to the above-numbered Paragraphs.

130. Nationwide denies the allegations contained in Paragraph 130 of Plaintiffs' Complaint.

131. Nationwide denies the allegations contained in Paragraph 131 of Plaintiffs' Complaint.

Count IX

132. Nationwide restates its answers to the above-numbered Paragraphs.

133. Nationwide denies the allegations contained in Paragraph 133 of Plaintiffs' Complaint.

134. Nationwide denies the allegations contained in Paragraph 134 of Plaintiffs' Complaint.

135. Nationwide denies the allegations contained in Paragraph 135 of Plaintiffs' Complaint.

136. Nationwide denies the allegations contained in Paragraph 136 of Plaintiffs' Complaint.

Count X

137. Nationwide restates its answers to the above-numbered Paragraphs.

138. Nationwide denies the allegations contained in Paragraph 138 of Plaintiffs' Complaint.

139. Nationwide denies the allegations contained in Paragraph 139 of Plaintiffs' Complaint.

140. Nationwide denies the allegations contained in Paragraph 140 of Plaintiffs' Complaint.

141. Nationwide denies the allegations contained in Paragraph 141 of Plaintiffs' Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief can be granted

SECOND AFFIRMATIVE DEFENSE

Plaintiffs are barred from seeking the relief requested by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs are barred from seeking the relief requested by laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs are estopped from seeking the relief requested.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs have waived their right to seek the relief requested.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from seeking the relief requested by their contributory and/or comparative negligence.

SEVENTH AFFIRMATIVE DEFENSE

Nationwide hereby puts Plaintiffs on notice that it intends to rely on such further defenses as are developed during the course of this litigation. Nationwide expressly reserves the right to amend its Answer accordingly.

Respectfully submitted,

NATIONWIDE LIFE INSURANCE
COMPANY OF AMERICA

By its attorneys,

/s/ Timothy J. Casey
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